

1871.  
REG.  
v.  
DAYALJI  
ENDARJI.

relied upon *In re the case of Nuthoo Kumall\**; *Reg. v. Shama Churn Roy*, (a) and *Reg. v. Heeramun Singh* (b).

*Dhirajlal Mathuradas* (Government Pleader) relied upon the proceedings of the Madras High Court under date the 4th of November 1868, reported in 4 Mad. H. C. Rep., Appendix xviii.

*Shántarám* in reply.

PER CURIAM:—Following the ruling of this court in *Reg. v. Nuthoo Kumall*, the Court annuls the conviction and sentence, as the act which the accused is alleged to have committed amounted to the giving of false evidence in a judicial proceeding, an offence punishable under Sec. 193 of the Indian Penal Code, and beyond the jurisdiction of the Magistrate F. P. The fine, if levied, to be restored. The accused having already undergone, upwards of four months' rigorous imprisonment, the Court is of opinion that no further proceedings against the accused are necessary.

*Conviction and sentence annulled.*



May 17.

REG. V. AVJI bin NA'RU *et al.*

*Stamp—Complaint—Seizure of Cattle—Act III. of 1857—Court Fees' Act, VII. of 1870, Sec. 31, and Sch. II., No. 1 (b).*

The illegal seizure and detention of cattle, to which Sec. 14 of Act III. of 1857 refers, is not an "offence" within the meaning of Sec. 31 and Sch. II., No. 1, cl. (b), of the Court Fees' Act, VII. of 1870. Complaints of such illegal seizure and detention do not require a stamp.

If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant.

THE accused were convicted of "illegal seizure and impounding of cattle," under Sec. 14 of Act III. of 1857, by the Subordinate Magistrate, Second Class, of Waruz, in

(a) 8 Calc. W. Rep., Cr. R. 27. (b) *Ibid.* 30.

\* "A witness who had stated on solemn affirmation that he was not present when the police captured an offender in the act of flight was punished by a Magistrate under Sec. 181 I. P. Code. The High Court annulled the conviction and sentence, on the ground that the act constituted giving false evidence in a judicial proceeding under Sec. 193, and was beyond the Magistrate's jurisdiction:—*In re Nuthoo Kumall*, 8th November 1865."—West's Acts and Regulations, note to Sec. 181 of Act XLV. of 1860.

the Satará district, and were sentenced to a fine of Rs. 1871.  
3-9-0, to be paid to the complainant. The sentence also  
directed the accused to repay to the complainant a sum of REG.  
eight annas, the amount of stamp duty on the complaint. v.  
AVJI NA'RU  
et al.

The case was noticed on examination of the criminal returns of the Satará Subordinate Magistrates for the month of October 1870. The record and proceedings were called for, for the purpose of considering whether the court fee could be legally directed by the Magistrate to be refunded by the accused to the complainant, the act of the accused not being treated by Act III. of 1857, Sec. 14, as an offence, but rather as an injury for which damages might be awarded.

The case was considered this day by BAYLEY and MELVILL, JJ.

PER CURIAM:—The Court considers that the illegal seizure and detention of cattle, to which Sec. 14 of Act III. of 1857 refers, is not “an offence” within the meaning of Sec. 31, Sch. II., No. 1, cl. (b), of the Court Fees’ Act, 1870.

The word “offence” is expressly used in other sections of Act III. of 1857, but not in Sec. 14. Moreover, Sec. 14 expressly provides that the complaint shall be either verbal or written upon *plain* paper. The words “upon plain paper” are not repealed in Sch. III., Part II., of the Court Fees’ Act, 1870, as the same or similar words standing in other Acts are repealed by that schedule. It seems clear, therefore, that such complaints do not require a stamp, and that the accused should not have been called upon to repay the stamp fee.

*Order accordingly.*

*In the matter of a Prohibitory Notice under Reg. XII. of  
1827, Sec. XIX., Cl. 6.*

April 25.

*Notice issued by Magistrate—Prohibition to use level-crossing, provided for particular villages, for general traffic—Reg. XII. of 1827, Sec. XIX., cl. 1 and 6.*

A notice prohibiting general traffic over certain level-crossings on a railway, provided for particular villages, forbidden, as not falling within the scope of Reg. XII. of 1827, Sec. XIX., cl. 1 and 6.

J. E. OLIPHANT, District Magistrate of Puná, under date the 31st of March 1871, issued the following notice:—

1871.

## "NOTICE.

"Whereas information has been received from the Traffic Manager, Great Indian Peninsula Railway, that certain of the level-crossings over the Railway, which are provided *solely* for the accommodation of villages on either side of the line, are used as public thoroughfares by much heavy traffic, which leaves the highroad to Bombay in order to evade the toll-bars; and whereas the passage of many heavily-laden carts in constant succession over such accommodation crossings is attended with danger to passengers travelling by railway: It is hereby notified that orders have been issued to the gatekeepers at the said accommodation level-crossings, and to the Pátíls of the villages in which they are situated, to prohibit general traffic from passing over them. Any person disobeying this prohibitory order will be punished according to law.

"This injunction is issued under cl. 6, Sec. XIX. of Reg. XII. of 1827."

This notification was submitted to the High Court, for its approval or otherwise, under Reg. XII. of 1827, Sec. XIX., cl. 6.

The notice was considered by LLOYD and KEMBALL, JJ.,

PER CURIAM:—The notice issued by the District Magistrate under date the 31st of March 1871, not coming within the scope of Reg. XII. of 1827, Sec. XIX., cl. 6, is hereby forbidden, as the Court is of opinion that it does not come within the scope of the law quoted.

April 26.

## REG. V. TÁI, wife of NÁNCHAND.

*Sanction for Prosecution—Specification of Section—Crim. Proc. Code, Sec. 169.*

Sanction for the prosecution of the accused was accorded by an Assistant Session Judge in the following terms:—

"There is no doubt whatever that Tái, Bájí, and Bálá, these three persons, made before me certain statements contradictory of the statements which they had made before the committing Magistrate. Therefore, if from such statements of theirs they may be liable to any charge, there is sanction from here" (*i.e.*, I give my sanction) "for their prosecution."

*Held* that this gave sufficient sanction for the prosecution of the accused under Sec. 193 of the Indian Penal Code, and that it is not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused is permitted to be prosecuted.

THE accused was convicted by the Honorable G. A. Hobart, Session Judge of Khándesh, of giving false evi-